IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6401 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMIRMIYA LIYAKATALI CHISTI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6401 of 2003

MR KB ANANDJIWALA for Petitioner No. 1-5

MR VM PANCHOLI APP for Respondent No. 1

MR CL SONI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/07/2004

ORAL JUDGEMENT

1. Rule. Mr. V.M. Pancholi, learned APP appears

and waives service of notice of rule on behalf of respondent No.1 - State whereas Mr. C.L. Soni, appears and waives service of notice of rule on behalf of respondent No.2/original complainant.

2. Mr. Anandjiwala, learned advocate of the petitioners and Mr. Soni, learned advocate of respondent No.2 jointly stated that the parties have amicably settled the matter and, therefore, they requested that the matter may be taken up for final disposal today. Mr. Pancholi, learned APP has not expressed any objection to the above request. Hence, this matter is taken up for final disposal today.

3. By filing instant petition under section 482 of the Code of Criminal Procedure ('the Code' for short), the petitioners against whom offence is registered vide CR No.107 of 2003 at Dhoraji City Police Station for commission of the alleged offences under Sections 498-A, 306 and 114 of the Indian Penal Code on the basis of the complaint filed by respondent No.2 herein, have prayed to quash and set aside the said complaint on the grounds stated in the petition.

4. It is alleged against the petitioners that deceased Rukshana who was lawfully wedded wife of petitioner No.1 was subjected to mental and physical cruelty at the hands of petitioners by making demand of dowry and the deceased was pregnant for the second time but the petitioners did not want the child and therefore also the deceased subjected to mental and physical cruelty as a result of which at the time of delivery she died because of mental shock which she has received and therefore the aforesaid complaint came to be filed against all the petitioners.

5. Petitioner No.1 - Amarmiya's marriage with Rukaiyaben alias Rukshanabanu - the deceased was solemnized on 15.11.1998 at Dhoraji. It is the case of the prosecution that there was harassment at the hands of petitioner No.1 and other petitioners towards the deceased at her matrimonial home at Palitana. Out of the wedlock the deceased gave birth to a baby boy named Akil in November 1999. Thereafter the deceased once again conceived. It is alleged that petitioner No.1 insisted for abortion of the fetus and at that point of time also there was harassment. It is also alleged that some injuries were caused to the deceased. The deceased was carrying twin pregnancy and at the time of delivery she delivered the first child and thereafter while delivering second child which was already dead in the womb,

complications arose and Rukshanabanu herself passed away in the hospital on 8.7.2003.

6. The petitioners thereafter demanded the custody of two children which was refused by father of the deceased i.e., the first informant and subsequently it led to filing of FIR being CR No.107 of 2003 at Dhoraji Police Station on 20.7.2003 for commission of alleged offences punishable under sections 498-A, 306 and 114 of IPC. Police investigated the case and ultimately filed charge-sheet for the offence punishable under sections 498-A, 306 and 114 of IPC.

7. Apart from criminal prosecution launched by respondent No.2 against the present petitioners, there were civil proceedings preferred by petitioner No.1 under the Guardian & Wards Act against respondent No.2 in the District Court, Bhavnagar praying for the custody of the minor children as petitioner No.1 being the lawful guardian. The said proceedings were numbered as Civil Misc. Application No.69 of 2003 in the District Court, Bhavnagar. In the said proceedings, by passage of time the parties to the proceedings i.e., petitioner No.1 and father of deceased (respondent No.2 herein) have amicably settled the matter as the dispute was between the family members. In the proceedings initiated by present petitioner No.1 against respondent No.2 under the Guardian & Wards Act, i.e., Civil Misc. Application No.69 of 2003 which was pending in the Court of the learned District Judge, Bhavnagar, a settlement was arrived at in writing between the parties to the effect that custody of the minor children will remain with respondent No.2 i.e., grandfather of the minor children and certain other terms and conditions have also been incorporated in the said settlement which was placed on record of Civil Misc. Application No. 69 of 2003 vide Ex.32. Thus, those proceedings were accordingly brought to an end by the amicable settlement. A certified copy of the said settlement produced at Ex.32 in Civil Misc. Application No. 69 of 2003 is produced before this Court for perusal which is ordered to be taken on record of this case.

8. I have heard the learned advocates of the appearing for the parties and perused the averments made in the petition, certified copy of the settlement arrived at between the parties before the District Court, Bhavnagar in Civil Misc. Application No.69 of 2003 which was produced at Ex.32 and also the judgment cited at the bar.

9. By virtue of clause 7 of the terms of settlement, respondent No.2, who is original first informant and father of deceased, is also ready and willing to settle the dispute as a result of which he no longer desired to pursue the prosecution instituted against the petitioners. As this being a matrimonial dispute and the fact remains that the charge-sheet has also been filed only for the offence under Sections 498-A and not under section 306 of IPC, it would be in the interest of both the parties if the settlement arrived at between the parties is permitted to be implemented and the prosecution is quashed in light of the said settlement.

10. The Supreme Court in BS Joshi and others v. State of Haryana and others, AIR 2003 SC 1386 has held that in cases of matrimonial disputes wherein the charge is for the offence under section 498-A if the parties amicably settled the dispute then the High Court in exercise of its inherent powers under section 482 can quash the prosecution. The Supreme Court has observed that though section 498-A is non-compoundable still this being a matrimonial dispute between family members, section 320 of the Code shall not come in the way of the High Court so far as its inherent powers under section 482 is concerned. In view of this settled position of law and as both the parties i.e., the petitioners and respondent No.2 have decided to settle the matter and having found that the settlement is genuine without there being any pressure or duress on either of the sides it would be just and proper to quash and set aside the Criminal Complaint. Applying the principles laid down by the Supreme Court in the above referred to judgment to the facts of the present case, it cannot be said that amicable settlement has not been arrived at between the parties in Civil Misc. Application No.69 of 2003 filed by petitioner No.1 against respondent No.2 in the District Court, Bhavnagar under Guardian & Wards Act claiming custody of his minor children and as per clause 7 of the terms of settlement respondent No.2 has agreed to withdraw all the criminal cases filed by him against the present petitioners, there is no impediment to accede to the prayers made in this petition.

11. Seen in the above context, the petition deserves to be allowed by granting the prayers made in this petition.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Criminal Complaint filed by respondent No.2 herein at Dhoraji City Police Station vide CR No.107 of 2003 for commission of alleged offences

under Sections 498-A, 306 and 114 of IPC against the present petitioners is quashed and set aside. Rule is made absolute accordingly.

(A.M. Kapadia, J.)

(karan)